

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NORTH DAKOTA

In re:	§	
	§	Chapter 7
	§	Case No. 24-30167
Pro-Mark Services, Inc.,	§	
	§	
Debtor.	§	
	§	
	§	Adv. No. 24-07014
ERIK A. AHLGREN, as Chapter 7	§	
trustee of Bankruptcy Estate of Pro-	§	
Mark Services, Inc., as Administrator of	§	
the Pro-Mark Services, Inc. Employee	§	
Stock Ownership Plan, and as Trustee of	§	
the Pro-Mark Services, Inc. Employee	§	
Stock Ownership Trust,	§	
	§	
Plaintiff,	§	
	§	
	§	
v.	§	
	§	
CONNIE BERG, KYLE BERG, CONNIE	§	
BERG REVOCABLE LIVING TRUST,	§	
KYLE R. BERG REVOCABLE LIVING	§	
TRUST, CHAD DUBOIS, and MIGUEL	§	
PAREDES,	§	
	§	
Defendants.	§	

**BERG DEFENDANTS' NOTICE OF MOTION AND MOTION TO  
REDESIGNATE THE COUNTERCLAIM AS AN AFFIRMATIVE  
DEFENSE OR, IN THE ALTERNATIVE, DISMISS THE COUNTERCLAIM**

NOTICE IS HEREBY GIVEN that Connie Berg, Kyle Berg, Connie Berg Revocable Living Trust, and Kyle R. Berg Revocable Living Trust (collectively, the "Berg Defendants"), by and through their undersigned counsel of record, file this

Motion to Redesignate the Counterclaim as an Affirmative Defense or, in the Alternative, Dismiss the Counterclaim.

NOTICE IS FURTHER GIVEN that unless a party in interest files an objection in writing to the relief requested in the Motion on or before July 23, 2025, which is fourteen (14) days from the date of service of this Notice, the Court may thereafter and without further notice enter an order granting the relief requested in the Motion.

NOTICE IS FURTHER GIVEN that written objections to the Motion, if any, shall be filed with the Clerk of the United States Bankruptcy Court, whose address is 655 First Avenue North, Suite 210, Fargo, ND 58102, with a copy mailed to counsel for the Berg Defendants, whose name and address is listed below.

The bases for the relief requested in this Motion are set forth in the *Berg Defendants' Memorandum in Support of Motion to Redesignate the Counterclaim as an Affirmative Defense or, in the Alternative, Dismiss the Counterclaim* filed contemporaneously with this Motion. Connie Berg's request for attorneys' fees pursuant to the Redemption and ESOP Stock Purchase Agreement was mistakenly designated as a counterclaim, instead of as an affirmative defense of recoupment. Connie Berg requests attorneys' fees defensively to reduce any damages awarded to the Trustee in this adversary proceeding. Connie Berg does not seek to affirmatively recover money from the Debtor's estate. Connie Berg asks the Court to redesignate the request for attorneys' fees as an affirmative defense of recoupment or, in the alternative, to dismiss the counterclaim, and the Berg Defendants will amend the Answer to specifically include an affirmative defense of recoupment.

## STATEMENT OF NONCONSENT TO FINAL ORDERS

As required by Federal Rule of Bankruptcy Procedure 7012(b), the Berg Defendants hereby state that they do not consent to entry of final orders or judgment by the Bankruptcy Court in the above-captioned Adversary Proceeding.

Dated: July 9, 2025

/s/ Stephen M. Pezanosky

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*Attorneys for Defendants Connie Berg,*

*Kyle Berg, Connie Berg Revocable*

*Living Trust, Kyle R. Berg Revocable*

*Living Trust*

**CERTIFICATE OF SERVICE**

The undersigned certifies that on the 9th day of July, 2025, the above document was served on all counsel of record via CM/ECF, including the Trustee and his counsel.

/s/ Stephen M. Pezanosky  
Stephen M. Pezanosky